

ATTACHMENT E

REVIEW OF OHIO LEGAL ENFORCEMENT OFFICES

I. EXECUTIVE SUMMARY

In addition to reviewing the various Ohio programs mentioned in the petition, U.S. EPA reviewed the activities of the State legal offices that pursue enforcement on behalf of the Ohio Environmental Protection Agency (Ohio EPA) program offices: the Ohio EPA Office of Legal Services (OLS) and, in the Office of the Ohio Attorney General (OAG), its Environmental Enforcement Section and its Bureau of Criminal Identification and Investigation (CRIM). U.S. EPA reviewed the functioning of those enforcement offices to cover the full range of program implementation activities. Based on its review of the functions and accomplishments of those Ohio legal offices and Ohio's criminal environmental enforcement program, U.S. EPA found no grounds for withdrawal/revocation of any programs complained of in the petition.

II. ALLEGATIONS

While the petition did not focus on the enforcement offices, a number of allegations made by the petitioners regarding the implementation of air, water and waste programs expressed concerns about how the State pursues enforcement for those programs. The allegations concerning enforcement for the programs mentioned in the petition expressed concerns with follow up on citizen complaints, the timing and effectiveness of enforcement efforts, the levels of penalties obtained, and citizen involvement in the enforcement process.

III. WITHDRAWAL CRITERIA

As discussed throughout this document, program withdrawal/revocation criteria are set forth in the requirements for each authorized, delegated or approved program. While elements of these program-specific criteria include enforcement functions, there is no separate criterion for performance by enforcement offices.

IV. PRELIMINARY FINDINGS

In the Draft Report,¹ U.S. EPA preliminarily concluded that once a determination was made to pursue enforcement on behalf of the various programs, the legal offices followed through and acted pursuant to their authorities to enforce the matters before them; and that they initiate, litigate (or prosecute) and conclude a significant number of enforcement cases. In many cases, they obtained settlements with significant penalties. U.S. EPA found that Ohio EPA has pursued enforcement, within the bounds of its authorities, in a significant number of cases and that a

¹U.S. EPA refers to the report dated August 30, 2001, entitled "Draft Report on U.S. EPA Review of Ohio Environmental Programs" as the Draft Report.

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significant number of cases which Ohio EPA could not resolve at its level have been referred to and prosecuted by the Ohio Attorney General's Office. U.S. EPA was particularly pleased with Ohio's criminal enforcement offices, which provide extensive training on criminal law and procedures and have achieved a significant number of prosecutions of environmental crimes in an excellent mix of program areas. The August 2001 Draft Report preliminarily concluded that overall Ohio maintains an active environmental enforcement presence.

V. SUMMARY OF COMMENTS ON DRAFT REPORT

The comments received during the public comment period challenged the completeness of U.S. EPA's review of the enforcement office, alleging that questions were unanswered or information was missing on the environmental value of enforcement cases, file reviews, the rationale in selecting enforcement avenues, and the timing of enforcement. U.S. EPA has addressed these comments in the Responsiveness Summary. Of particular note, many of these comments were effectively addressed by Ohio EPA in the Summary of 2001 Enforcement Performance it issued in April 2002. Among other things, that report indicates that Ohio EPA has significantly reduced the time it takes to resolve enforcement cases, is collecting significant penalties, and is now tracking the environmental improvement achieved. U.S. EPA did not find evidence in the comments that would change the preliminary findings set forth in the August 2001 Draft Report.

VI. FINAL REPORT FINDINGS

Ohio maintains an active environmental enforcement presence. U.S. EPA's conclusions have not changed from the August 2001 Draft Report. The enforcement achievements and efforts described in Ohio EPA's Summary of 2001 Enforcement Performance confirmed U.S. EPA's prior conclusions about Ohio's environmental enforcement presence. U.S. EPA did not find a basis for withdrawal/revocation of programs in its review of the Ohio enforcement offices.

VII. RECOMMENDATIONS

U.S. EPA does not recommend withdrawal or revocation of any of the programs mentioned in the petition based on our review of the functions and accomplishments of Ohio's legal enforcement offices and criminal environmental enforcement program.